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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 OSCAR OLIVAS,

11 Plaintiff,

12 v.

13 BILLY WHITFORD, Port Director of
14 Calexico West Port of Entry, Customs
15 and Border Patrol; PETE FLORES,
16 Director of Field Operations, San
17 Diego Field Office, Customs and
18 Border Protection; R. GIL
KERLIKOWSKE, Commissioner of
Customs and Border Protection; JEH
JOHNSON, Secretary of Homeland
Security; JOHN KERRY, Secretary of
State,

Defendants.

CASE NO. 14cv1434-WQH-BLM

ORDER

19 HAYES, Judge:

20 The matter before the Court is the Petition for Writ of Habeas Corpus pursuant
21 to 28 U.S.C. § 2241 filed by Petitioner Oscar Olivas. (ECF No. 1).

22 **I. Background**

23 On June 12, 2014, Petitioner Oscar Olivas filed a Petition for Writ of Habeas
24 Corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1). The Petition alleges that Petitioner
25 is “a 45-year-old natural-born U.S. citizen who Customs and Border Protection (CBP)
26 officials unlawfully exiled to Mexico almost three years ago.” *Id.* at 1-2. Petitioner
27 alleges that he was “born in El Monte in Los Angeles County, California on August 10,
28 1969” and that he “was issued a ‘delayed registration of birth’ certificate on January 19,

1 1970, five months after his birth.” *Id.* at 6-7. Petitioner alleges that his “exile began
2 in August 2011 when he attempted to return to the United States from Mexico . . . [and]
3 CBP officials unlawfully refused to allow him to enter the United States.” *Id.* at 2.
4 Petitioner alleges that, “[h]aving been detained and removed from the United States
5 against his will, Mr. Olivas effectively remains in custody for purposes of habeas
6 corpus jurisdiction under 28 U.S.C. § 2241.” *Id.* at 17.

7 Petitioner requests that this Court (1) “Grant the Order to Show Cause as
8 requested . . .,” (2) “Issue a writ of habeas corpus ordering Defendants to allow Plaintiff
9 to enter the United States without detaining him,” (3) “Declare the Plaintiff is a U.S.
10 citizen,” (4) “Declare that any order directing or authorizing Plaintiff’s removal from
11 the United States was entered in violation of the Due Process Clause of the Fifth
12 Amendment and/or other applicable law and is therefore null and void,” and (5) “Enjoin
13 Defendants and their officers, agents, servants, employees, attorneys, and/or successors
14 from prohibiting Plaintiff from entering the United States and/or detaining him at or
15 after such entry” (ECF No. 1 at 20-21).

16 On June 12, 2014, Petitioner filed an “Application for Issuance of Order to Show
17 Cause Pursuant to 28 U.S.C. Section 2234.” (ECF No. 3).

18 On June 16, 2014, the Court ordered Respondents to show cause why the petition
19 should not be granted. (ECF No. 5).

20 On July 8, 2014, Respondents filed a Return to Petition for Writ of Habeas
21 Corpus. (ECF No. 12). In the Return to Petition for Writ of Habeas Corpus
22 Respondents allege that “[o]n December 17, 2010, Petitioner’s mother, Ms. Olivas-
23 Cervantes, was interviewed by a consular officer at the U.S. Consulate in Ciudad
24 Juarez, Mexico.” *Id.* at 2. “During the interview, Ms. Olivas-Cervantes signed an
25 affidavit stating that Petitioner was not born in Los Angeles, but was born in a clinic in
26 Tijuana, Mexico.” *Id.* at 3. “On or about August 22, 2011, Petitioner applied for
27 admission to the United States at the Calexico Port of Entry, claiming he was a U.S.
28 citizen.” *Id.* at 4. “The CBP officer who was processing Petitioner’s application for

admission prepared documentation to commence removal proceedings before an Immigration Judge (“IJ”) . . . [t]wo notices to Appear (“NTA”) were prepared, and both appeared to have been ‘cancelled,’ under 8 C.F.R. § 239.2 prior to the commencement of proceedings.” *Id.* at 5.

On July 22, 2014, Petitioner filed a Traverse. (ECF No. 15).¹

Parties filed supplemental briefing regarding the standard and burden of proof in this case. On November 2, 2015, the Court issued an Order stating:

Pursuant to 28 U.S.C. § 2243, Petitioner is entitled to an evidentiary hearing to prove the disputed fact that he was born in El Monte, California and that he is entitled to an order allowing him to enter and remain in the United States. The Court will hold an evidentiary hearing to “summarily hear and determine” the disputed fact of petitioner’s place of birth and citizenship. 28 U.S.C. § 2243.

(ECF No. 126 at 3-4).

The Court held a four-day evidentiary hearing beginning on November 12, 2015. Petitioner testified on his own behalf and presented evidence that included Petitioner’s birth registration (Ex. 11), Petitioner’s immunization record (Ex. 2), photographs (Ex. 3), and the visa application of Petitioner’s mother (Ex. 5). Petitioner presented the testimony of his mother, Delia Perez; his father, Raul Encinas; his aunt, Hortencia Garcia; his family friend, Josefina Gaona; and his wife, Claudia Hernandez. Petitioner presented testimony of an expert witness on police interrogations and false confessions, Deborah Davis, PhD. Petitioner presented the deposition testimony of his aunt, Anastacia Ontiveros; his aunt, Elvira Rodriguez; and the State Department employee who interviewed Petitioner’s mother at the U.S. consulate in Ciudad Juarez, Shashenka Esparza.

Respondents presented evidence of Petitioner’s grandparents’ visa applications (Exs. Y, Z). Respondents presented the deposition testimony of Shashenka Esparza, Ryan Grizzle, and Kerry Hyre, State Department employees working in the Fraud

¹ On December 11, 2014, the Magistrate Judge issued an order limiting discovery to information directly related to Petitioner’s habeas claim and denying Petitioner’s motion to compel discovery related to Petitioner’s Fifth and Fourteenth Amendment claims. Petitioner’s non-habeas claims remain pending.

1 Prevention Unit at the U.S. consulate in Ciudad Juarez in December 2010.

2 **II. Findings of Fact**

3 **A. Immigration History**

4 Delia Perez (“Perez”), Petitioner’s mother, was born in Mexico on January 11,
5 1947, the youngest of six daughters to Cresencio Olivas and Trinidad Maria Olivas.
6 Perez was raised in and around Mexicali, Mexico. Cresencio Olivas and Trinidad Maria
7 Olivas are deceased.

8 In 1963 or 1964 when Perez was sixteen or seventeen years old, she began
9 crossing the border from Mexicali into the United States daily to work as a field hand
10 in Imperial Valley. Perez testified that she used a false identity and false United States
11 birth certificate to enter the United States through the Calexico Port of Entry. Perez
12 testified that she understood that she was violating immigration law by entering the
13 United States using a false identity and claiming to be a United States citizen.

14 Perez testified that she met Raul Encinas, Petitioner’s father, in 1963 or 1964
15 when she was sixteen or seventeen years old. Petitioner testified that she and Encinas
16 were working in the fields in Imperial Valley when they met and they became
17 romantically involved. On June 18, 1964, upon discovering Perez lacked proper
18 documentation, U.S. Border Patrol allowed Perez to voluntarily depart the United
19 States. In 1965, Perez obtained a border crossing card, which allowed her to enter the
20 United States for 48-hour periods.

21 Perez testified that her parents, Cresencio Olivas and Trinidad Maria Olivas,
22 moved to Los Angeles together in the late 1960s while Perez remained in Mexicali.
23 Hortencia Olivas Garcia, Perez’s sister, testified at the evidentiary hearing that her
24 parents came to the United States together and that they never lived apart from each
25 other. In excerpts of her deposition admitted at the evidentiary hearing, Anastacia
26 Ontiveros, Perez’s sister, testified that her parents moved to the United States together.

27 In a typed Immigrant Visa and Alien Registration application for Cresencio Soto
28 Olivas, Cresencio Olivas indicated that he resided in “Mexicali, Baja California” from

1 “Nov1943–Nov.1966” and resided in “Los Angeles, California” from
 2 Nov1966–May1972.” (Ex. Z at 5). In a typed Immigrant Visa and Alien Registration
 3 application for Marie Trinidad de Cervantes Olivas, Marie Trinidad Olivas indicated
 4 that she resided in “Mexicali, Baja Califor.” from “Nov. 1943–Nov.1969” and resided
 5 in “Los Angeles, California” from “Nov. 1969–May 1972.” (Ex. Y at 24). Both
 6 applications were signed, and all the information in them sworn to be true, by Cresencio
 7 and Marie Trinidad Olivas, respectively, in Tijuana on November 21, 1972.²

8 **B. Delia Perez**

9 Perez testified that she moved from Mexicali to live with her parents in the
 10 United States “around May or -- in the middle of the year, ‘68.” (ECF No. 144 at
 11 20:12-25). Perez testified that she saw Raul Encinas, Petitioner’s father, in Los Angeles
 12 in 1968 driving down the street in his car. Perez testified that Encinas saw Perez and
 13 stopped. Perez testified that Petitioner was conceived in Encinas’s car in Los Angeles.
 14 Perez testified that she found out she was pregnant but she did not tell Raul Encinas and
 15 did not see Raul Encinas again because she did not know where to find him.

16 Perez testified she had been looking for work since she moved to the United
 17 States, but once she told her parents that she was pregnant, her father did not want her
 18 to look for work until after she had given birth.

19 Perez did not see a doctor while she was pregnant and received no prenatal care.
 20 Perez testified that she did not go to a doctor because she “felt fine,” and she “would
 21 have liked to, but [she] had no money and . . . wasn’t working.” (ECF No. 161 at 53:
 22 14-20). Perez testified that her father did not want her to go to the doctor because he
 23 was afraid that she would be deported.

24 **C. Other Births in the Olivas Family**

25 During the time Perez was pregnant with Petitioner, two of Perez’s sisters,

26
 27 ² Cresencio Olivas indicated on his visa application that he was assisted in
 28 completing the application, but the portion of the application asking for the identity of
 the person assisting the applicant was left blank. (Ex. Z at 7). Trinidad de Cervantes
 Olivas did not indicate on the visa application whether she was assisted in completing
 the application. (Ex. Y at 26).

1 Anastacia Ontiveros and Hortencia Garcia, were also pregnant and living in the Los
 2 Angeles area. Perez's sisters testified that they received prenatal care during their
 3 pregnancies. Perez testified that her father did not tell Ontiveros and Garcia not to go
 4 to the doctor "[b]ecause they had husbands, and their husbands would take them to the
 5 doctor." (ECF No. 161 at 55:3-7). Anastacia Ontiveros, testified in her deposition that
 6 during Perez's pregnancy, she saw Perez almost daily because they lived nearby.

7 Several months before Petitioner was born, Hortencia Garcia gave birth to a
 8 daughter on April 4, 1969 at the Los Angeles General Hospital. On cross examination,
 9 Garcia testified that she was not pregnant with her daughter at the same time that Perez
 10 was pregnant with Petitioner. Garcia testified,

11 Q. And do you recall when Oscar was born?

12 A. 8/10/69.

13 Q. So wasn't there an overlap of about five months when you were
 pregnant at the same time with Delia?

14 A. No. Well, Gabriella was born in April.

15 (ECF No. 146 at 60:12-16). Anastacia Ontiveros gave birth to a son in November 1969,
 16 three months after Petitioner was born. Ontiveros testified in her deposition that she
 17 received prenatal care and gave birth to her son at the Los Angeles General Hospital.
 18 At the time, Ontiveros was not lawfully present in the United States.

19 **D. Petitioner's Birth**

20 Petitioner Oscar Olivas was born on August 10, 1969. Petitioner's biological
 21 parents are Delia Perez and Raul Encinas. Perez testified that Petitioner was born in her
 22 parents' home in Los Angeles, where she was residing. Perez testified that the address
 23 of her parents' home was 2017 East 78th Street. Perez testified that she did not go to
 24 a hospital to give birth because her father told her she would give birth at home. Perez
 25 testified that she began having contractions the previous afternoon at home with her
 26 mother and father. Perez testified that when her contractions began her mother called
 27 her sister Hortencia Garcia "to come over and stay with her because my dad was going
 to work in the morning." (ECF No. 161 at 58:7-9). Perez testified,

28 Q. After Hortensia came, did anyone else come to the house that night or
 morning?

1 A. No.

2 Q. Until Oscar was born, it was just Hortensia and your mom?

3 A. Yes.

4 Q. When you gave birth to Oscar, when Oscar came out, was anyone else in the house besides your mother and Hortensia?

5 A. No. And the midwife.

6 Q. Who was the midwife?

7 A. I didn't previously know that lady. She was my mom's friend, but I didn't know her.

8 Q. Had you ever met her before?

9 A. No.

10 Q. How is it that the midwife came to the house?

11 A. Well, I didn't really notice a time, but I suppose it was like at 6:00 or 6:30, something like that –

12 *Id.* at 59:9-24. Perez testified that Petitioner was born at 8:30 or 8:40 in the morning on August 10, 1969. Perez testified that she does not recall the midwife's name and that she never saw the midwife again.

13 Hortencia Garcia, Perez's sister, testified at the evidentiary hearing that Petitioner was born at 2017 78th Street in Los Angeles. Garcia testified that at the time of Petitioner's birth, she was living in the Whittier neighborhood of Los Angeles. Garcia testified that she was at the house when Petitioner was born because her mother had called her come while Perez was in labor. Garcia testified that she was present when Petitioner was born, along with her mother and a woman who came to help with the birth. Garcia testified that the woman who helped with the birth left ten or fifteen minutes after Petitioner was born.

14 Anastacia Ontiveros, Perez's sister, testified in her deposition that she lived on East 78th Street in 1969, less than half a block away from her parents.³ Anastacia Ontiveros initially testified in her deposition that she did not find out about Petitioner's birth until the day after he was born when her mother called her. Anastacia Ontiveros testified later in her deposition:

15 A. . . . [S]he had the baby in the morning. I think it was like 8:00, 8:10, something like that, in the morning.

16 Q. At about 8:10 in the morning?

17 ³ The Court does not make any adverse inference from the fact that Petitioner's aunt, Anastacia Ontiveros, did not appear in person at the evidentiary hearing. Respondent provided no evidence that a subpoena was properly served on Anastacia Ontiveros.

1 A. Yes, around that time.

2 Q. Do you know when she went into labor?

3 A. No, no.

4 Q. And so was it the day he was born that you found out he had been born?

5 A. Yes, in the afternoon, in the afternoon.

6 Q. And who told you?

7 A. My mom.

8 Q. In person or on the phone?

9 A. No, in person.

10 Q. She came over to your house?

11 A. Yes.

12 (Deposition of Anastacia Ontiveros at 41:3-18, November 18, 2014). Ontiveros
13 testified in her deposition that she visited Oscar the day he was born and her mother and
14 father were present, but Hortencia Garcia was not present because she lived farther
15 away. Later in the deposition, Anastacia Ontiveros was shown a declaration signed and
16 dated July 17, 2014, in which Anastacia Ontiveros states that she saw Perez when she
17 was pregnant in Los Angeles and visited Petitioner the day after he was born. Ontiveros
18 testified in her deposition that she had never seen the declaration before. After reading
19 the declaration, Ontiveros testified in her deposition,

20 Q. Okay. Paragraph 6. "In August 1969, Delia gave birth to Oscar." It
21 says, "I was not at the house when Oscar was born, but my mother called
22 to tell me the news."

23 A. Yes.

24 Q. So she called you on the telephone?

25 A. Um-hum.

26 Q. She didn't come to your house?

27 A. Correct. . . .

28 Q. And then it says, "The next day, I went to my parents' house to visit
Delia and to meet Oscar."

A. Um-hum. Yes.

Q. Is that correct?

A. Yes, yes, correct.

Id. at 71:18-72:13. Ontiveros testified that she did not see the midwife and did not
know the midwife's name. Ontiveros testified in her deposition, "I don't know [the
midwife]. I'm not sure if she lived in Tijuana, but she was visiting L.A., I think." *Id.*
at 42:16-18. Ontiveros testified in her deposition that her mother was acquainted with
the midwife and "knew from that lady that she assisted in childbirth in Tijuana." *Id.* at
42:19-24.

Elvira Olivas Rodriguez, Perez's sister, testified in her deposition that she was

1 living on East 78th Street at the time of Petitioner's birth and that she met Petitioner
 2 when he was seven days old. Rodriguez acknowledged in her deposition that her visa
 3 application indicates that she lived in Mexicali until 1970. Rodriguez gave birth to a
 4 son in a hospital in Los Angeles in 1971.

5 At the evidentiary hearing, Perez was asked whether she stated in her deposition
 6 that Rodriguez did not come to see her at the house in Los Angeles because Rodriguez
 7 was in Mexicali; Perez acknowledged that she had said that. On cross examination,
 8 Perez was asked whether Rodriguez was in Mexicali when Petitioner was born and
 9 Perez responded, "No." (ECF No. 146 at 30:18-20). Anastacia Ontiveros testified in
 10 her deposition that Rodriguez was living in Mexicali when Petitioner was born.

11 Perez testified at the evidentiary hearing that she procured a false declaration
 12 from sister, Elvira Olivas Rodriguez, in which Rodriguez stated that she was a friend
 13 of Perez in Los Angeles, saw Perez when she was pregnant, and met Petitioner in Los
 14 Angeles when he was one week old. At the evidentiary hearing, Perez testified,

15 Q: Since you signed that declaration in Juarez, in trying to protect Oscar's
 citizenship, have you always made good decisions?

16 A: Well, I believe so.

17 Q: You mentioned you have a sister named Elvira Olivas?

18 A: Yes.

19 Q: You have a friend also named Elvira Olivas?

20 A: No.

21 Q: And, again, you recall being deposed in this case?

22 A: Yes.

23 Q: Do you recall being asked about a declaration signed by an Elvira
 Olivas?

24 A: Yes. . . . And I'm very sorry, and I'm -- very remorseful, but I did it to
 protect -- to protect and for my son to be given his citizenship back.

25 Q: Well, let's -- let's talk about what you did. What -- what did you say
 about your relationship with the Elvira who signed that declaration?

26 A: I said she was a friend because when they asked me for witnesses, for
 people who knew us, sisters or relatives, I went there to the place where
 my son was born. And I didn't find anyone, none of the ladies who really
 liked me, who -- who saw me when I was pregnant, when I gave birth to
 my son, and I didn't find anyone. Some of the ladies had passed away,
 and others had moved away. And . . . I thought I can say Elvira is a friend
 so that it will help in the declaration and say that she's one of the friends.

27 Q: Why did you think it would help to say she was a friend instead of your
 sister?

28 A: Because . . . they were asking for witnesses who knew us, and they said
 that would be very useful. . . .

A: . . . But as far as that -- that statement, I fixed that with an attorney.

Q: How did -- how do you think that you fixed that?

1 A: Because I signed the document, and he told me that that had been
2 cleared up, that lie that I told.

3 (ECF No. 144 at 40:24-42:13).

4 Josefina Gaona, a friend of Perez and her sisters, testified at the evidentiary
5 hearing that she moved to the United States in 1968 and lived with Anastacia Ontiveros
6 and her husband, Rodolfo, on East 78th Street for a few months. Gaona testified at the
7 evidentiary hearing that while she was living on East 78th Street with Anastacia and
8 Rodolfo Ontiveros, Perez and her parents were living less than half a block away on the
9 other side of the street. Gaona testified that Perez was pregnant at the time. Gaona
10 testified at the evidentiary hearing that she met Petitioner the second day after he was
11 born. In a declaration dated July 12, 2014, Gaona stated that she was living on the same
12 street as Perez when Petitioner was born and that she moved to El Monte, California
13 shortly after Petitioner was born. At the evidentiary hearing and in her deposition,
14 Gaona testified that when Petitioner was born she had already moved from East 78th
15 Street to El Monte.

16 **E. Perez's Social Security Application**

17 Perez testified that after Petitioner was born, she began working at factories in
18 Los Angeles. On November 3, 1969, Perez applied for a Social Security number. Perez
19 testified that Rodolfo Ontiveros assisted her in filling out the application for a Social
20 Security number because the form was in English and Rodolfo Ontiveros was the
21 person who always helped Perez fill out paperwork. The address listed on the Social
22 Security number application is 2041 East 78th Street, Los Angeles, California, 90001.
23 Perez testified that the address listed on the application was the address of her sister,
24 Anastacia Ontiveros, and brother-in-law, Rodolfo Ontiveros.

25 **F. Registration of Petitioner's Birth in Los Angeles**

26 Perez testified that she did not register Petitioner's birth immediately because her
27 father refused to allow Perez to register Petitioner's birth. Perez testified that her father
28 was afraid Perez would be deported to Mexico. Perez registered Petitioner's birth in
Los Angeles, California on January 19, 1970. Perez testified that she was prompted to

1 register Petitioner's birth in January 1970 because she took him to the doctor for a
 2 check up and immunizations but the doctor would not see Petitioner because Perez did
 3 not have Petitioner's birth certificate. Perez testified that after the doctor refused to see
 4 Petitioner, her brother-in-law, Rodolfo Ontiveros told her he would take her to get her
 5 son registered. Petitioner testified that Rodolfo Ontiveros knew how to register a birth
 6 and spoke English well. Perez testified that she and Rodolfo Ontiveros went to the
 7 courthouse and Rodolfo Ontiveros spoke in English to someone and filled out a piece
 8 of paper with the necessary information.

9 **G. Petitioner's Birth Certificate**

10 The birth certificate states that Petitioner was born at 2030 East 78th Street.
 11 Perez testified that the address listed on the birth certificate is not the address of the
 12 home Petitioner was born in, or the address of Perez and Petitioner's residence. Perez
 13 testified that 2030 East 78th Street was the address of Anastacia and Rodolfo Ontiveros
 14 at the time of Petitioner's birth. Perez testified that she did not notice that the address
 15 was incorrect until recently. On cross examination, Perez testified,

16 Q. Last week do you recall Mr. Vakili, Oscar's attorney, asked you why
 you told me at your deposition that Oscar was born at 2030 78th Street?

17 A. Yes, I remember.

18 Q. And you said that you thought there would be consequences with
 Oscar's birth certificate if you said that he was born somewhere else; is
 that right?

19 A. That's right.

20 Q. So you knew that the address on the birth certificate was not where
 Oscar was born; is that right?

21 A. Yes. I noticed until now with this problem that came up because
 previously I hadn't looked.

22 Q. And did you know that Oscar was not born at 2030 when I took your
 deposition on October 30, 2014?

23 A. Yes, Counsel, and I'm sorry. I am really sorry. I did it to protect my
 son, and I repeat, I thought there would be problems if he had been born
 at another address, and one does whatever one can for one's children. I
 24 didn't think that it would be such a big problem.

25 (ECF No. 146 at 29:24-30-17).

26 Perez signed the birth certificate in two places. Perez testified that she signed her
 27 own name in a second box on the birth certificate, marked "Attendant's Certification"
 28 where the physician or midwife is instructed to sign because she did not know the name

1 of the midwife who helped her deliver and was told that she should sign. On cross
2 examination, Perez testified that when she went to the registrar to complete Petitioner's
3 birth certificate, the registrar asked her to get the midwife's signature or return to the
4 registrar with someone who could certify that he or she attended Petitioner's birth.
5 Perez testified,

6 Q. You didn't get the midwife, Ms. Puga, to come back and sign the birth
certificate?

7 A. No. She was a little old lady, and I didn't know her, and I didn't know
where to find her to go get her.

8 Q. And you didn't get your mother to come back and sign the birth
certificate?

9 A. No, because my mom hadn't seen that lady either anymore, and then
10 they told me that if I didn't have the name of the midwife that I could sign
it.

11 (ECF No. 146 at 27:7-15).

12 H. Deportation of Delia Perez

13 Perez testified that she was deported when Petitioner was a baby, while she was
14 working at a factory. Perez testified that she does not recall whether she was deported
15 to Tijuana or Mexicali. Perez testified that she contacted her family when she returned
16 to Mexicali and they helped her obtain an application to obtain a visa that would allow
17 her to reenter the United States. Perez testified that her sister, Hortencia Garcia, and an
18 attorney in the United States prepared the application for her. Perez testified that she
19 signed the application but that she did not review the information on the form well
20 before sending it back. The application states that Perez lived in Mexicali until
21 February 1969 and began living in Los Angeles in February 1969. Perez testified at the
22 evidentiary hearing that the application is incorrect because she came to the United
23 States in approximately May of 1968. Perez testified that she cannot explain the
24 inconsistency between the dates.

25 Perez was issued an immigrant visa and immigrated to the United States on April
26 8, 1972. Perez testified that she received the visa based on having a child born in the
27 United States.

28 I. Petitioner's Childhood

1 Petitioner testified that he has always believed he was born in Los Angeles.
2 Petitioner's understanding of where he was born is based upon representations made to
3 him by Perez and other family members.

4 Petitioner's immunization record indicates that the first date he received a
5 vaccination was January 19, 1970.

6 Petitioner admitted several photographs of Petitioner as a baby into evidence.
7 Perez testified that the admitted photographs were taken in Los Angeles when Petitioner
8 was five months to two years old.

9 On November 11, 1974, Perez gave birth to her second son, Alberto Solis, in the
10 United States. Perez testified that she gave birth to her second son at the hospital in
11 Salinas, California. Alberto Solis was baptized on January 11, 1975.

12 Petitioner was baptized in California on February 17, 1979. Anastacia Ontiveros
13 testified in her deposition that Oscar was still a baby at his baptism.

14 Petitioner grew up in Los Angeles, California and Salinas, California with his
15 grandparents and his mother. At the evidentiary hearing, Petitioner testified that when
16 he was growing up, his mother told him that he had been born on 78th Street in Los
17 Angeles. Petitioner went to school in California and obtained a driver's license as a
18 teenager. Petitioner testified that when he turned eighteen he registered for Selective
19 Services.

20 **J. Petitioner's Immigration History**

21 On November 6, 1989, Petitioner filed a petition to permit his first wife, Cristina
22 Partida, to seek an immigrant visa. At the evidentiary hearing, Petitioner testified that
23 he and his wife resided in Mexicali while the petition was pending and Petitioner
24 crossed the border to work in Calexico, California approximately six times a week using
25 his birth certificate, driver's license, and Social Security card. On November 6, 1989,
26 Petitioner's petition for his first wife's immigrant visa was approved based on
27 Petitioner's citizenship. On December 5, 1991, Petitioner's first wife was granted an
28 immigrant visa.

On December 2, 1998, at the Calexico Port of Entry, Petitioner was referred to secondary inspection. Border agents discovered marijuana in the vehicle Petitioner was driving. Petitioner was subsequently charged with and convicted of importation of marijuana. Petitioner was not deported as a result of his conviction. As a condition of probation, Petitioner had to remain in the United States.⁴

K. Application for Lawful Permanent Residence of Petitioner's Wife

Petitioner married Claudia Hernandez, in 2004. In 2008, Claudia Hernandez applied for lawful permanent residence in the United States. While the application for lawful permanent residence was being processed, Claudia Hernandez had to leave the United States. Claudia Hernandez, Petitioner, and their children moved to Mexicali in the fall of 2010. At the evidentiary hearing, Petitioner testified that he continued to cross the border regularly for work in the United States.

At the evidentiary hearing, Claudia Hernandez testified that in the interview for her application for lawful permanent residence with the U.S. Consulate in Ciudad Juarez, Mexico, she was asked questions about Petitioner's birth certificate, Petitioner's mother, and Petitioner's family. Claudia Hernandez testified at the evidentiary hearing that consular officials told her that they wanted to interview Petitioner's mother and that they would give her another appointment to return with her mother-in-law.

L. The Juarez Interview

Hernandez received an appointment to return to the U.S. consulate with Petitioner's mother on December 17, 2010 at 9:00 a.m. Delia Perez was living in Salinas, California at the time, and traveled to meet Claudia Hernandez in Mexicali. On December 16, 2010, Delia Perez and Claudia Hernandez traveled to Ciudad Juarez together for the interview. Hernandez testified that Perez tripped and dislocated her shoulder that she had recently had surgery on when they arrived at the hotel. Hernandez

⁴ Testimony regarding Petitioner's prior drug offense was offered at the evidentiary hearing by Petitioner to show that Petitioner was not deported as a result of his conviction. The Court does not use this information in any way to judge the credibility of Petitioner.

1 testified that Perez was in significant pain through the night and the following day.

2 On December 17, 2010, Department of State officials questioned Petitioner's
3 mother at the U.S. consulate in Ciudad Juarez, Mexico.⁵ There is no audio or video
4 record of the December 17, 2010 interview. Perez testified that she went to Juarez after
5 receiving a letter, either from Claudia Hernandez or from the consulate in Juarez, telling
6 her to come to an appointment and to bring documents including photos of her son
7 when he was younger, immunization and medical records, and school records.

8 Perez testified that when she arrived at the appointment at the U.S. Consulate she
9 turned her documents in at the window in the waiting room and waited to be called.
10 Perez testified that she was called into a small room with a glass divider. Perez testified
11 that the woman who interviewed her sat behind the glass partition. Perez testified that
12 the interview was conducted in Spanish and that she was asked questions about her son,
13 and the circumstances surrounding his birth. Perez testified that after the questions and
14 answers, the interviewer made statements including, "No. Your son was born in
15 Mexico," "You better tell the truth because you know what can happen to you and what
16 can happen to your son." (ECF No. 144 at 33:9-16). Perez testified that during the
17 interview she felt sad and helpless because she was telling the interviewer the truth but
18 the interviewer did not believe her. Perez testified that she did not leave the interview
19 "[b]ecause I thought the best thing was for me to wait and clarify to them -- for them

20 _____
21 ⁵ At the evidentiary hearing, Perez testified,
22 Q. Have you ever been to Ciudad Juarez in Mexico?

A. No, never.

23 Q. Have you ever been to the United States Consulate in Juarez?

A. No.

24 Q. Do you remember your son applying for a visa for his wife Claudia?

A. Yes.

25 Q. Okay. Were you involved in that visa process at all?

A. No. . . .

26 Q. Okay. Let's -- let me ask you again. Have you ever met Department of State
27 officials from Juarez?

A. No.

28 Q. Have you ever signed a statement saying that your son was born anywhere other
than Los Angeles?

A. Yes. . . .

Q. Where did you sign that statement?

A. In Juarez. (ECF No. 144 at 23:25-24:25).

1 to believe me that my son had been born in Los Angeles.” *Id.* at 35:10-13.

2 Perez testified that she signed an affidavit while she was at the interview because
3 “They made me lie. I told them my son had been born in Mexico because previously
4 she had told me, ‘If you say that your son was born in Mexico, nothing is going to
5 happen. Your son is not going to lose his papers because he has his registration.” *Id.*
6 at 35: 14-23. Perez testified,

7 A. So she said to me, “Where was he born?” She said once again.

8 Q. What did you say?

9 A. And then it just popped into my mind. Then I said, “In Tijuana.”

10 Q. Why did you say that?

11 A. I don’t know. It just -- it just came to me.

12 Q. Why didn’t you leave instead of saying that?

13 A. . . . I wanted that to be cleared up. I wanted the truth to be cleared up.

14 *Id.* at 35:23-36:7.

15 Perez testified that after she stated that Petitioner had been born in Mexico, the
16 interviewer called another man into the room, the two spoke, and the man handed Perez
17 a document. Perez testified,

18 Q. . . . did you sign it?

19 A. Yes, with -- with much sadness because I didn’t think that they would
20 make me sign a lie that I told.

21 Q. What was your emotional state when you signed it, if you know, if you
22 can describe it?

23 A. Very sad. Very sad. I was crying, and -- and I did not read that paper.

24 Q. Couldn’t you have just walked away instead of signing it?

25 A. No. No. I wouldn’t think of leaving. I thought that if I left, they
26 would detain me anyway.

27 *Id.* at 37:18- 38:2. Perez testified,

28 Q. You testified earlier that the interviewer told you to tell the truth; is that
correct?

A. Yes.

Q. Did she tell you anything else about your obligation to tell the truth?

A. Yes. Well, when she told me to tell the truth, I told her, “It’s the truth.
I’m telling you where my son was born. That’s the truth.” . . . And she
told me, “Do you know that if you lie, you can go to jail?”

Id. at 38:12-22. The English translation of the affidavit Perez signed at the U.S.
Consulate in Ciudad Juarez on December 17, 2010 (“the Juarez Statement”), states:

1 I, Delia Olivas Cervantes . . . state with acceptance [sic],⁶ freely and
2 without any coercion whatsoever, the following:

3 That on today's date I came before this Consulate because my son, Oscar
4 Ivan Olivas, requested an IR1 category resident visa to immigrate Claudia
Elena Hernandez Alvarez as the spouse of an American citizen. He
requested [sic] said petition on June 30, 2008.

5 For said application, a birth certificate, indicating that Oscar Ivan Olivas
6 was born on August 10, 1969 in Los Angeles, California and that he was
registered on January 19, 1970 was submitted.

7 But the truth of the facts is that my son Oscar Ivan Olivas was NOT born
8 in Los Angeles, CA. He was born in a clinic in Tijuana, Baja California
9 Norte. I don't remember the name of the clinic. I came across illegally
10 from Mexicali, BCN into the United States, together with my son Oscar
Ivan, when he was three months old. My brother-in-law, Rodolfo
Ontiveros recommended that I register him as if he had been born in the
United States.

11 My brother-in-law went to court with me to register my son as if he had
12 been born in the United States. I did not register my son in Mexico.

13 My son is unaware of the truth of the facts; he believes he was born in Los
14 Angeles, California.

14 For which [sic] I am aware that I did not state the truth of the facts before
15 this consular office, which I have been informed is a criminal offense.

16 (Ex. E-1).⁷ The affidavit was signed by Delia Perez and Kerry Hyre, Assistant Head of
17 the Fraud Prevention Office.

18 In a statement dated May 10, 2012, Perez asserts,

19 When I was interviewed by an officer on December 17, 2010 at the
20 Offices in Juarez, Chihuahua Mexico, I repeatedly confirmed my son's
21 birth place being Los Angeles, Ca., U.S. Citizen by birth. The officer kept
22 insisting my son was born in Mexico, which I kept denying. I was
intimidated and bullied throughout the whole interview. They began to
threaten me with immediate incarceration if I did not agree with them.
This harassment continued and continued until I signed a statement
declaring my son was born in Mexico. They coerced me into signing a
false document.

23 Ex. H at 104. A declaration by Delia Perez, signed and dated July 16, 2014 and filed
24 with the Court on July 22, 2014, Perez states,

26 ⁶ Where "[sic]" appears, "[sic]" was used in the English translation of the
27 affidavit.

28 ⁷ The Juarez statement was admitted into evidence at the evidentiary hearing to
impeach the testimony of Perez that Petitioner was born in Los Angeles. The Court
does not use this evidence for the truth of the matter asserted.

1 During the interview at the Consulate in Juarez, a female officer told me
 2 that she believed Oscar was born in Mexico. The female officer
 3 threatened that I would lose my United States citizenship and Oscar would
 4 not be able to stay in the United States if I did not admit that Oscar was
 born in Mexico. She told me that if I admitted that Oscar was born in
 Mexico, I would be able to keep my citizenship and Oscar would be
 allowed to stay in the United States with his family.

5 After I spoke with the female officer, a male officer entered the room. . .
 6 . He pressured me to say that Oscar had been born in Mexico, but I
 insisted that Oscar had been born in the United States.

7 I was not given a break to drink water or use the restroom. . . . I did not
 8 know how long the officers would keep me in that room if I did not tell
 them what they wanted to hear.

9 The officers questioned me for about two hours until I broke down and
 10 began crying. I felt tired and desperate for the questioning and my
 confinement to end. I felt the only way to make the officers stop was to
 tell them what they wanted.

11 I told one of the male officers that Oscar had been born in Tijuana. I
 12 chose Tijuana because it was the first city in Mexico that came to mind.
 13 . . .

14 The officers presented me with a typed statement and told me to sign it.
 As soon as I signed the statement, they took it away from me.

15 Ex. K at 26-32.

16 **1. Fraud Prevention Unit at the U.S. Consulate in Ciudad Juarez**

17 Deposition designations were admitted at the evidentiary hearing for U.S.
 18 Consulate employees with the Fraud Prevention Unit, Shashenka Esparza, Ryan
 19 Grizzle, and Kerry Hyre. The consular employees did not specifically remember Delia
 20 Perez or her interview with the Fraud Prevention Unit on December 17, 2010.
 21 Shashenka Esparza, a fraud investigation assistant in the immigrant visa section at the
 22 U.S. Consulate in Ciudad Juarez in December 2010, testified in her deposition that, as
 23 part of her duties in the immigrant visa section, she “reviewed cases with potential
 24 fraudulent birth records, and, basically, those records were American, but were U.S.
 25 birth records where the people were born with midwives, home births, or delayed birth
 26 registrations.” (Deposition of Shashenka Esparza at 16:5-17, Dec. 22, 2014). Esparza
 27 testified at her deposition that she does not remember the particular case involving
 28 Delia Perez and Petitioner Oscar Olivas because the Fraud Prevention Unit in Ciudad

1 Juarez had many cases concerning suspected fraudulent birth documents.

2 Esparza testified that this particular case was referred to the Fraud Prevention
3 Unit because “the mother is listed as an attendant [at the birth], and it was a home
4 birth.” *Id.* at 23:25-24:2. Esparza testified at her deposition that her interview notes
5 from her interview with Delia Perez indicate that Perez stated that the midwife arrived
6 around 7:00 p.m. and Petitioner’s birth was at 8:00 or 9:00 p.m. Esparza testified at her
7 deposition that she would have asked Delia Perez why the birth certificate indicates that
8 the birth was at 8:45 a.m.

9 Esparza testified at her deposition that when she finishes asking the interviewee
10 questions, “if the story doesn’t make sense and the evidence is a little bit awkward” she
11 would speak to the interviewee and tell her that “she needed to be honest . . . that it was
12 time to face the truth” and “if they don’t face the truth right now, the truth will haunt
13 them after that, because . . . the government were more strict and strict.” *Id.* at 36:14-
14 37:14. Esparza testified at her deposition that once the interviewee told the truth,
15 Esparza would start typing the affidavit. The affidavit was printed and given to the
16 mother to review and Esparza would ask the mother if everything in the affidavit is
17 correct. If the mother agrees with the affidavit, the deputy officer, in this case Kerry
18 Hyre, would be called into the room to sign the affidavit in front of the mother. The
19 deputy officer asks the interviewee if she was threatened or if she is giving this
20 statement willingly. If willing, the interviewee will sign the affidavit in front of the
21 interviewer and the deputy fraud manager.

22 Esparza testified at her deposition that there were no incentives or bonuses or
23 rewards for investigators who obtained admissions or confessions. Esparza testified,

24 Q. . . . did you ever threaten an interviewee with incarceration?

25 A. No. I -- personally, I always treat people with respect. . . .

26 Q. And did you ever threaten to take away someone’s citizenship?

27 A. No. No, not at all. . . .

28 Q. Did you ever promise someone that if they confessed they could keep
their citizenship

29 A. No.

30 *Id.* at 45:4-46:2.

1 Ryan Grizzle, the acting fraud prevention manager at the U.S. Consulate in
 2 Ciudad Juarez in December 2010 testified at his deposition that he encountered
 3 hundreds to a thousand delayed registrations of births accompanying an application for
 4 an immigrant visa during his tenure at the U.S. Consulate in Ciudad Juarez. Grizzle
 5 testified at his deposition,

6 Q: Will a delayed registration of birth certificate in application for an
 7 immigrant visa always trigger questions in the follow-up interview?

8 A. No, not necessarily, at least from my experience as a consular officer.
 9 . . . If there's other documentation already present, for instance, a passport
 10 or additional information within the visa application in the packet, then
 11 there would be no need to follow up on it

12 (Deposition of Ryan Grizzle at 42:15-43:22, Oct. 22, 2014). Grizzle testified at his
 13 deposition that if there were questions about a birth document when adjudicating an
 14 immigrant visa, an interview would be conducted with the applicant. Grizzle testified
 15 at his deposition,

16 Q. Could an applicant ever clear up a question as to somebody's birth
 17 record?

18 A. Possibly if the applicant was the mother or father.

19 Q. And only in those circumstances?

20 A. No. Spouses many times had additional supporting documentation....

21 *Id.* at 45:3-9. Grizzle testified that a case would be referred to the Fraud Prevention
 22 Unit if questions about the birth record were not cleared up by the initial interview with
 23 the applicant. Grizzle testified at the deposition,

24 Q. So what would be the next steps if you interviewed the applicant but it
 25 wasn't determinative?

26 A. The next step would be that we would reschedule a second appointment
 27 and we would ask for secondary evidence

28 Q. What would be some examples of secondary evidence that could verify
 birth in the United States for someone who had had a delayed registration
 of birth?

A. They don't verify birth, they verify the validity of the document. We
 would ask for things such as pre- and postnatal documentation, hospital
 records, clinical records, maybe ask for things such as immunization
 records, school records, siblings' birth certificates, and, again, the same
 type of pre- or postnatal, things like that, establishing patterns for the
 family, where they were born and things like that, time frames, time lines.
 . . . Some of that information could include the petitioner being present or
 the mother

Id. at 61:25-63:14. Grizzle testified at his deposition that if the first interview with the
 applicant was not determinative, the Fraud Prevention Unit would provide examples of

1 the “type of documentation [that] could help the applicant in trying to answer the
 2 questions.” *Id.* at 66:5-7. Grizzle testified that the Fraud Prevention Unit could inform
 3 the applicant that “one option is that the mother come But it could only be a
 4 request and we could not require them to come.” *Id.* at 66:18-67:2.

5 Grizzle testified at his deposition,

6 Q. So while you were in the Fraud Prevention Unit, did a parent who had
 7 come in for an interview ever convey to you that his or her child who was
 8 the petitioner for an immigrant visa, was not actually a U.S. citizen by
 9 virtue of having not been born in the United States?

10 A. Yes. On many occasions, more than 50, it could be into the 100s. . . .
 11 [T]hose cases required additional work by a U.S. consular officer,
 12 meaning an actual officer of the Department of State because that would
 13 require a formal declaration by that person, an affidavit which would be
 14 a sworn affidavit to a consular officer at that point, because admitting that
 15 a person that had documentation that they were a U.S. citizen and is not,
 16 that could not simply rest at the investigative level with a local national
 17 taking that information, it would require a sworn statement in front of a
 18 consular officer at that point. . . . I also remember cases where an
 19 investigator would come to me and say, a parent, mother or father has
 20 admitted that their son or daughter was not born in the United States, and
 21 then by the time I got to the room to conduct a separate interview and to
 22 swear them in and go through the affidavit process that they would recant
 23 or they would say that was not what they had said

24 *Id.* at 93:3-94:4.

25 Grizzle testified at his deposition,

26 Q. So if there was someone living in the United States with what appeared
 27 to you to be a fraudulently obtained birth certificate, you wouldn't refer
 28 that to the diplomatic secretary office?

29 A. That's not normally something that we would refer to the diplomatic
 30 security office because we're not making a determination on citizenship
 31 at that point. I would say our next step, if there was simply a birth record
 32 is that we would notify the American Citizen Services section because we
 33 would want to flag information for a possible application for a passport.
 34 So if the person then tried to obtain a passport, they would have to answer
 35 questions and we would provide that basic information. Again, it may not
 36 be germane to the case, the adjudicating officer would have to make that
 37 decision, but the information would be logged.

38 *Id.* at 103:14-104:6. Grizzle testified at his deposition that he and his deputies would
 not swear a parent in to make a sworn statement “until we were very sure that they
 understood what they were doing, they understand the information that was being
 presented to them, that we were comfortable with the process in which the information
 was gathered, that they understood the implication of it.” *Id.* at 110:4-10. Grizzle

1 testified that “[I]n no way, shape or form do we have any authority to force people to
2 give us information or in no way shape or form would we promise them something in
3 return for information.” *Id.* at 140:19-22. Grizzle testified at his deposition that “If any
4 applicant requested to get water, to use the restroom, to get food, even if that required
5 them leaving the consulate premises, they were granted that. Also, there was no way
6 for us, since we were separated by a hard line and bullet-proof glass and everything,
7 that we could have stopped them from walking out of any interview at any time.” *Id.*
8 at 153:15-21.

9 Reviewing the case notes from the Fraud Prevention Unit in Petitioner’s case,
10 Grizzle testified in his deposition that, “the biggest thing it shows me there is there’s
11 some concern of the date of birth versus the date of registration, and also that the
12 mother was the only person listed as the attendant” *Id.* at 148:9-12. Grizzle
13 testified that “[i]t would be uncommon to simply have only the mother listed as an
14 attendant. Normally a birth is going to be with, you know, some sort of medical
15 professional or there’s going to be somebody else there to assist the mother with the
16 birth, a family member or something if it’s a home birth.” *Id.* at 158:21-159:1.
17 Reviewing Petitioner’s baptismal record, Grizzle testified that it “appears slightly
18 peculiar to me based off of cultural things, only because it wasn’t until 1979 and I
19 believe the petitioner was born in 1969, so almost ten years old. Culturally, we only see
20 a baptismal happening when the child is young in Mexico.” *Id.* at 160:2-7.

21 Kerry Hyre, the consular officer in Ciudad Juarez who put Delia Perez under oath
22 and signed Perez’s sworn statement, testified at her deposition that before taking a
23 sworn statement she asks follow-up and clarifying questions with the interviewee to
24 ensure that what they are saying is voluntary and that the interviewee understands what
25 they are saying in the affidavit before they sign it. Hyre testified that it was not a
26 unique situation to have a parent confess that their child is not a U.S. citizen but that the
27 child is unaware that they were not born in the United States. Hyre testified that it was
28 not the policy of the State Department to intimidate someone during their interview and

1 that employees are trained to treat interviewees with respect. Hyre testified at her
 2 deposition that even when the U.S. Consulate has determined someone is not a citizen,
 3 it cannot take someone's passport or decide who can enter the United States, only a U.S.
 4 law enforcement officer is entitled to make those determinations.

5 **2. Expert Testimony of Doctor Deborah Davis**

6 At the evidentiary hearing, Petitioner's expert witness, Dr. Deborah Davis,
 7 described commonly used interrogation techniques and how the techniques lead to false
 8 confessions. Dr. Davis testified that innocent people "overestimate . . . the positive
 9 outcomes or underestimate the negative outcomes of . . . false confession." (ECF No.
 10 144 at 103:25-104:2). Dr. Davis testified that one of the leading reasons for false
 11 confessions is the person being interrogated is under distress, either physical or
 12 emotional, when they enter the interrogation, causing them to discount long-term
 13 outcomes in favor of their desire to end the interrogation. Dr. Davis testified that a
 14 second major reason for false confessions is the person being interrogated becomes
 15 convinced that their confession will work in their favor more than a denial will. Dr.
 16 Davis testified that law enforcement and government agencies are trained in the "Reid"
 17 method of interrogation, "designed . . . to convince the person it will work to their best
 18 interest for them to confess." *Id.* at 108:17-25. Dr. Davis testified that the third major
 19 reason for false confessions is the person being interrogated cannot resist the demands
 20 of the authority figure telling them they need to confess. Dr. Davis testified that
 21 implicit threats can be perceived by interrogation subjects as explicit threats; "a person
 22 will just remember that 'I was threatened' and may or may not remember the exact
 23 words that were used, but they remember their interpretation." *Id.* at 151:20-22.

24 Dr. Davis testified that upon reviewing the materials in this case, she identified
 25 reasons to believe that the interrogating officer, Shashenka Esparza, used the
 26 interrogation technique of theme development while interrogating Delia Perez. Dr.
 27 Davis testified that Esparza used a "You did it to offer your son a better life" theme and
 28 "she had just made a mistake and that a lot of nice people can make mistakes and that's

1 understandable” theme. *Id.* at 128:15-129:11. Dr. Davis testified that Delia Perez
 2 began the interrogation in a “less than ideal” physical and emotional condition and
 3 could have felt hopeless. *Id.* at 148:22-149:1.

4 Dr. Davis testified that it is difficult to distinguish between true confessions and
 5 false confessions. Dr. Davis testified,

6 [S]tudies of what’s in true confessions and what’s in false confessions
 7 shows that the false confessions have a lot of the same stuff. They look
 8 very similar. So it’s very difficult to tell them apart. So what
 9 interrogation sellers recommend is, you know, it’s best if you have some
 10 other evidence to help you corroborate it or not and to compare what’s in
 11 the confession to everything else you know.

12 *Id.* at 146:18-24. On cross examination, Dr. Davis testified that “there are other
 13 motivations that might make somebody want to give a true confession.” *Id.* at 186:18-
 14 22.

15 On cross examination, when asked whether she considered the differences
 16 between police interrogations and consular interviews in forming her opinions, Dr.
 17 Davis testified that “the physical way that they conduct these [consular] interrogations
 18 or . . . the circumstances of the suspect and where they are” differ. *Id.* at 169:22-
 19 170:11. Dr. Davis testified that she understood that in this case there was a glass
 20 partition between the interviewer and interviewee and that the Reid method dictates that
 21 “it’s best not to have something between you.” *Id.* at 170:22-171:4.

22 On cross examination, Dr. Davis testified,

23 Q. Do you know whether the State Department is considered to be a law
 24 enforcement agency?

25 A. . . . I’m not sure what the State Department all consists of. I don’t
 26 know but . . . the important thing is what Ms. Perez thought and what she
 27 was told. So what I know is not really –

28 Q. Okay. And so you didn’t consider the culture at the U.S. Consulate at
 all in arriving at conclusions in your report?

A. No. I considered most -- whatever these officers or whatever they said
 in their depositions about what went on. . . .

Id. at 176:25-277:16.

M. After the Juarez Interview

On January 11, 2011, Petitioner applied for a U.S. passport in Los Angeles,
 California. In January 2011, Petitioner’s application for a U.S. passport was denied

1 based on child support arrears.

2 On August 22, 2011, Petitioner applied for admission to the United States at the
3 Calexico, California Port of Entry. At the evidentiary hearing, Petitioner testified that
4 on August 22, 2011, he was sent to secondary inspection, searched, and asked questions
5 about his birth certificate, license, and Social Security card. Petitioner testified that the
6 officer read him the statement his mother gave at Ciudad Juarez, handcuffed Petitioner,
7 and sent him to be processed. Petitioner testified that he was interviewed several times
8 throughout the night and was released approximately sixteen hours after he arrived.
9 Petitioner testified that he explained in each interview that the statement given in Juarez
10 was false and testified that one of the officers interviewing Petitioner called his mother.
11 Petitioner was not allowed to enter the United States when he was released on August
12 23, 2011.

13 Veronica Othon, the CBP Officer at the Calexico Port of Entry who helped
14 process Petitioner on August 22, 2011, testified at the evidentiary hearing that she has
15 no independent recollection of what happened at the Calexico Port of Entry with
16 Petitioner, but offered testimony based on the I-213 report she prepared during the
17 event, contained in Petitioner's A-file. Othon testified that Petitioner's A-file includes
18 the TECS hit, the lookout notice that generally causes an applicant for admission to be
19 referred to secondary inspection, stating, "false claim to USC, subject's mother signs
20 a sworn statement indicating the subject was not born in the US but born in Mexicali,
21 [Baja California Norte], instead." (ECF No. 147 at 17:11-19:1).

22 Othon testified that she obtained the information in the report from statements
23 Petitioner made under oath and from statements made by Petitioner's mother when she
24 was contacted by Othon on the evening of August 22, 2011. The Record of Sworn
25 Statement in Proceedings from August 23, 2011 at the Calexico Port of Entry, admitted
26 into evidence at the evidentiary hearing, contains a transcript of the interview Othon
27 conducted with Petitioner. The Record of Sworn Statement in Proceedings states,

28 Q. Where were you born?

A. I believe I was Los Angeles, California. . . .

1 Q. Has your mother ever stated that you were born else where?

2 A. Yes, she has claimed that I was born in Mexicali, then in Tijuana,
3 Mexico.”

4 (Ex. G at 32). Othon testified that the I-213 indicates that when she contacted
5 Petitioner’s mother, Delia [Perez] “claimed that her son was born in Los Angeles,
6 despite her sworn testimony given at the [American Consulate] admitt[ing] that Olivas,
7 Oscar Ivan was born in Tijuana.” (ECF No. 147 at 25:21-25). Othon testified that if
8 Delia Perez had told Othon that she had been threatened or coerced or to give
9 information at the American consulate, Othon would have included that information in
10 the report.

11 At the evidentiary hearing, Petitioner testified that when he was released from the
12 Calexico Port of Entry back to Mexico he was given a packet of forms, including a form
13 listing a toll free number that Petitioner was told to call to check on the date of his
14 hearing. Petitioner testified that when he returned to Mexico he contacted an
15 immigration attorney and called the toll free number once a week for almost two years
16 but never received a court hearing date. At the evidentiary hearing, Petitioner testified
17 that he went to the border between seven and ten times to request a hearing and during
18 his last visit, a supervising officer threatened to arrest Petitioner for attempting to enter
19 the United States illegally if he presented himself at the border again.

20 On July 24, 2012, Petitioner applied for a certificate of citizenship on form N-
21 600. United States Citizenship and Immigration Services denied Petitioner’s
22 application for a certificate of citizenship on the ground that he had not established that
23 he derived or acquired U.S. citizenship through his mother. On January 17, 2013,
24 Petitioner applied for a U.S. passport at the U.S. Consulate in Tijuana, Mexico.
25 Petitioner and his mother were interviewed in connection with Petitioner’s passport
26 application. Petitioner’s application for a U.S. passport was denied based on the
27 affidavit his mother signed in Ciudad Juarez on December 17, 2010.

28 Petitioner has been refused entry into the United States. Petitioner testified that
the Mexican government does not recognize him as a Mexican citizen and Petitioner has

1 never seen a Mexican birth certificate for himself.

2 **N. Testimony of Petitioner's Father**

3 At the evidentiary hearing, Raul Encinas testified that he first learned that he had
4 a son named Oscar Olivas approximately three years ago. Encinas testified that he was
5 married in 1967 in Salinas, California. Encinas testified that he had a daughter in May
6 1968 and another son in March 1970, both born in California.

7 Encinas testified that he first moved to the United States in 1963 and lived in Los
8 Angeles from 1968 to 1971. Encinas testified that his daughter Barbara was born when
9 he moved to Los Angeles with his wife and was baptized in Los Angeles on February
10 8, 1969. Encinas testified that he had sex with Delia Perez in Los Angeles in 1968.
11 Encinas testified that he often visited his parents in Mexicali in the late 1960s.

12 On cross examination, Encinas testified that he has received disability payments
13 because he was diagnosed with progressive Alzheimer's disease with "occasional
14 confusion and disorientation." (ECF No. 146 at 68:11-16). On cross examination,
15 Encinas testified that he was in removal proceedings in 2001. Encinas testified that his
16 doctor wrote a letter dated November 23, 2001 indicating that Raul Encinas had
17 progressive Alzheimer's disease. Encinas testified that in his deposition he stated that
18 he was granted a waiver in his removal proceedings and given back his green card.
19 Raul Encinas testified that his condition has improved and he no longer has trouble
20 remembering things.

21 **III. Analysis**

22 Once a petition for writ of habeas corpus is filed in federal court pursuant to 28
23 U.S.C. § 2241, the court must comply with the procedures set forth in 28 U.S.C. § 2243.
24 Section 2243 states that

25 [a] court, justice or judge entertaining an application for a writ of habeas
26 corpus shall forthwith award the writ or issue an order directing the
27 respondent to show cause why the writ should not be granted, unless it
28 appears from the application that the applicant or person detained is not
entitled thereto [T]he person to whom the writ or order is directed
shall make a return certifying the true cause of detention. . . . The applicant
or the person detained may, under oath, deny any of the facts set forth in
the return The court shall summarily hear and determine the facts,

1 and dispose of the matter as law and justice requires.

2 28 U.S.C. § 2243.

3 The Court has previously determined that

4 Petitioner has asserted a non-frivolous claim of U.S. citizenship and this
5 Court has jurisdiction pursuant to 28 U.S.C. § 2241 over Petitioner's
6 habeas petition challenging his exclusion from the United States. *See*
7 *Flores-Torres v. Mukasey*, 548 F.3d 708, 712-13 (9th Cir. 2008) (finding
8 that the court had habeas jurisdiction where petitioner challenged his
9 detention in the absence of a final order of removal).

10 (ECF No. 126 at 3).

11 The Court determined that Petitioner was entitled to an evidentiary hearing
12 pursuant to 28 U.S.C. § 2243, to prove the disputed fact that he was born in California.
13 Based on the evidence presented at the evidentiary hearing, the Court will “summarily
14 hear and determine” the disputed fact of petitioner’s place of birth and citizenship. *See*
15 28 U.S.C. § 2243.

16 In his petition for a writ of habeas corpus, Petitioner asserted that he is residing
17 in Mexico and is unable to enter the United States. (ECF No. 1 ¶ 1-2). At the
18 evidentiary hearing, Petitioner bore the burden of establishing, by a preponderance of
19 the evidence, that he is being unlawfully excluded from the United States because he
20 is a citizen of the United States by birth. *See Snook v. Wood*, 89 F.3d 605, 609 (9th Cir.
21 1996) (“It is the petitioner’s burden to prove his custody in violation of the
22 Constitution, laws or treaties of the United States.”); *see also Berenyi v. District*
23 *Director, Immigration and Naturalization Service*, 385 U.S. 630, 670-71 (1967)
24 (finding that when a person outside of the United States seeks a declaration of
25 citizenship, “[h]e is the moving party, affirmatively asking the Government to endow
26 him with all the advantages of citizenship. . . . [I]t has been universally accepted that
27 the burden is on the alien applicant to show his eligibility for citizenship in every
28 respect.”).

29 Petitioner contends that he carried his burden of establishing, through
30 documentary evidence and testimony of his family and friend that he was born in Los
31 Angeles, California and is a citizen by birth. Respondent contends that neither the

1 documentary evidence nor the testimony presented at trial supports a finding that
2 Petitioner was born in Los Angeles, California. Respondents contend that the
3 documentary evidence presented at trial supports an inference that Petitioner was born
4 in Mexico and was brought to the United States by his mother in November 1969 when
5 he was three months old.

6 **A. Prior Determinations of Petitioner's Citizenship**

7 Plaintiff initially contends that he has been determined to be a citizen by birth
8 based on his receipt of a birth certificate, a Social Security number, a driver's license,
9 the fact that he was not deported after his criminal conviction, and the fact that his
10 mother and first wife were able to adjust their immigration status based on Petitioner's
11 citizenship. The Court finds that these prior events were not determinations that
12 Petitioner was a citizen. Conversely, the United States determined that Petitioner is not
13 a United States citizen by birth when it denied Petitioner's application for a certificate
14 of citizenship in 2012 and denied Petitioner's passport application in 2013.

15 **B. Discussion of the Evidence**

16 The Court finds that Petitioner likely honestly believes he was born in the United
17 States. However, Petitioner's beliefs about the location of his birth are not persuasive
18 because they are based upon statements made to him by persons the Court finds to be
19 not credible.

20 Petitioner presented testimony of his mother, father, aunts, and family friend
21 stating that he was conceived and born in the United States to support his contention
22 that he is a U.S. citizen by birth. Petitioner also presented his birth certificate, his
23 childhood immunization records, and photographs of Petitioner as a baby to support his
24 claim that he was born in the United States.

25 Petitioner's mother, Delia Perez, testified at the evidentiary hearing that she
26 arrived in the United States in the spring of 1968, that Petitioner was conceived in Los
27 Angeles in late 1968, and that her son, Petitioner Oscar Olivas, was born in Los Angeles
28 on August 10, 1969. At the evidentiary hearing, Perez was evasive in her answers and

1 repeatedly changed her testimony when she was pressed on a point. Perez's testimony
2 at the evidentiary hearing was repeatedly impeached by prior inconsistent statements
3 and by documentary evidence. Perez testified falsely in her deposition about evidence
4 she manufactured from her sister, Elvira Olivas Rodriguez, to support Petitioner's claim
5 of citizenship. Perez also admitted that she knowingly testified falsely in her deposition
6 that Petitioner was born at the address listed on his birth certificate when she knew that
7 Petitioner had been born at a different address.

8 Perez made a series of misrepresentations to the United States government
9 outside of these proceedings and in these proceedings in order to obtain immigration
10 benefits for herself and her son. Perez testified that she used a false identity and false
11 documents to enter the United States on countless occasions in the 1960s and
12 subsequently lied about her past actions on her applications to file a petition for
13 naturalization. On Perez's first application to file a petition for naturalization, filed in
14 1984, Perez marked "No" in response to the question on the form asking "Have you
15 ever claimed in writing, or in any other way, to be a United States citizen?" (Ex. L at
16 22). Perez filed a second application to file a petition for naturalization in 1985, and
17 Perez marked "No" in response to the question on the form asking "Have you ever
18 claimed in writing, or in any other way, to be a United States citizen?" (Ex. L at 14).

19 Perez's testimony that she arrived in the United States in spring of 1968 is not
20 supported by any of the documentary evidence. Perez's visa application, completed in
21 1972, states that she moved from Mexicali to Los Angeles in February 1969. Perez
22 testified that she cannot explain the inconsistency between the dates. The earliest
23 documentary evidence showing that Perez was in the United States in 1968 or 1969 is
24 Perez's November 1969 application for a Social Security number. Furthermore, Perez's
25 testimony at the evidentiary hearing that she moved to the United States in the spring
26 of 1968 is inconsistent with the Juarez Statement, in which Perez indicates that she
27 moved to the United States with Petitioner in November 1969.

28

1 The testimony of Petitioner's father, Raul Encinas that he had sex with Delia
2 Perez in Los Angeles in late 1968 has no probative value to establish that Petitioner was
3 born in the United States. Raul Encinas had no knowledge of where Petitioner was born
4 because he did not know he had a son with Delia Perez until three years ago. Encinas
5 testified that he was working and living in Los Angeles during the time that Petitioner
6 was conceived and testified that he went to Mexicali, Mexico often to visit his parents
7 in the late 1960s.

8 Raul Encinas received a diagnosis of progressive Alzheimer's disease in 2001.
9 On the stand, Encinas was able to recall events from forty years ago with specificity
10 when asked by counsel for Petitioner, but was unable to recall events from less than two
11 years ago when asked by counsel for the Respondent to confirm whether he was asked
12 certain questions and gave certain answers in his 2014 deposition. Encinas's diagnosis
13 of progressive Alzheimer's disease more than fifteen years ago calls into question his
14 ability to accurately recall events from forty years ago.

15 Past inconsistent statements about the location and circumstances of Petitioner's
16 birth call into question the probative value of the testimony of Petitioner's mother.
17 Perez testified at the hearing that she did not receive prenatal care with Petitioner, that
18 she gave birth at home, and that she did not seek any medical care for Petitioner until
19 he was five months old because she was in the United States unlawfully and feared
20 deportation. However, Petitioner's aunts and family friend testified that they were in
21 Los Angeles unlawfully during this same time period, yet they received prenatal care
22 during all of their pregnancies and they gave birth to their babies in a hospital.⁸

23 At the evidentiary hearing, Perez testified that a midwife assisted in her delivery.
24 However, Perez did not know the name of the midwife or where the midwife lived.

25
26 ⁸ The consular employees at the Fraud Prevention Unit who interviewed Perez
27 for Petitioner's wife's visa application indicated that the inconsistencies in the patterns
28 and practices of the Olivas family regarding pre- and postnatal care, childbirth, and
baptism would have alerted them that Petitioner's California birth registration may be
fraudulent.

1 Perez testified that the midwife was her mother's friend who she had not met before the
2 birth and never saw again. Perez did not locate the midwife to sign Petitioner's birth
3 registration as a witness, instead signing her own name as the mother and as the
4 witness. Perez could not explain why she did not have her mother or sister, Hortencia
5 Garcia, sign the birth certificate as the attendant to Petitioner's birth. Petitioner's aunt,
6 Anastacia Ontiveros testified that she believed the midwife "lived in Tijuana, but she
7 was visiting L.A., I think." (Ontiveros Depo. 42:16-18). Ontiveros testified that her
8 mother knew that the midwife "assisted in childbirth in Tijuana." *Id.* at 42:19-24.
9 Perez's lack of knowledge about who the midwife was, Perez's failure to have the birth
10 certificate signed by the midwife, and Anastacia Ontiveros's assertions that the woman
11 who assisted with Petitioner's birth lived and worked in Tijuana call into question the
12 veracity of Perez's testimony that Petitioner was born in her parents' home in Los
13 Angeles with the help of a midwife.

14 The testimony of Perez and Petitioner's aunts, Hortencia Garcia and Anastacia
15 Ontiveros, regarding the circumstances of Petitioner's birth is contradicted by
16 documentary evidence. Perez and Petitioner's aunts testified that their parents,
17 Petitioner's grandparents, never lived apart from one another and moved to the United
18 States together in the 1960s. Perez and Petitioner's aunts consistently state that
19 Petitioner's grandmother was present for Petitioner's birth and that his birth occurred
20 at Petitioner's grandparents' home in Los Angeles where Perez was living. This
21 testimony is contradicted by the visa applications in Petitioner's grandparents' A-files,
22 in which Petitioner's grandmother indicated that she lived in Mexicali until November
23 1969, three months after Petitioner's birth, at which point she joined her husband in Los
24 Angeles. *See* Ex. Y at 24. Petitioner's grandfather's visa application, filed on the same
25 day as the grandmother's in 1972, states that he left Mexicali and moved to Los Angeles
26 in November 1966, three years prior to the date his wife indicated that she moved to
27 Los Angeles. *See* Ex. Z at 5. There are no facts to support an inference that Petitioner's
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1 grandparents had a motive to provide false information on their visa applications,
2 completed in 1972. The dates listed on the visa applications of Petitioner's
3 grandparents are inconsistent with the testimony of Petitioner's mother and aunts that
4 their parents immigrated together and never lived apart. Moreover, the testimony of
5 Petitioner's mother and aunts that Petitioner's grandmother was present at Petitioner's
6 birth in Los Angeles in August 1969 is inconsistent with Petitioner's grandmother's
7 visa application indicating that she arrived in Los Angeles in November 1969.

8 The consistency between the dates on Petitioner's grandmother's visa application
9 indicating that Petitioner's grandmother arrived in the United States in November 1969
10 and Petitioner's mother's Social Security application, completed in November 1969,
11 lends support to Respondent's position that Petitioner was not born in the United States
12 and came to the United States with his mother and grandmother in November 1969.

13 In addition to his mother's testimony and his birth registration, the primary
14 evidence Petitioner provides to establish that he was born in the United States is the
15 testimony of his aunt, Hortencia Garcia, and family friend, Josefina Gaona, and the
16 deposition testimony of Petitioner's aunts, Anastacia Ontiveros and Elvira Rodriguez.
17 There are material inconsistencies in the testimony of Petitioner's aunts and family
18 friend. The testimony of Hortencia Garcia relating to the circumstances of Petitioner's
19 birth is inconsistent with the testimony provided by others. Testimony and evidence
20 admitted at the evidentiary hearing indicates that Garcia was pregnant at the same time
21 that Perez was pregnant with Petitioner. On direct examination, Garcia testified that
22 Perez confided in her that she was pregnant at their parents' house in Los Angeles.
23 However, on cross examination, Garcia testified that she was not pregnant while Perez
24 was pregnant with Petitioner. Garcia's testimony that she was not pregnant at the same
25 time as Petitioner calls into question whether Perez was living in Los Angeles during
26 her pregnancy and demonstrates a lack of credibility in Garcia's testimony. Garcia also
27 testified that her sister, Elvira Rodriguez, was living in Los Angeles when Petitioner
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1 was born. However, both Anastacia Ontiveros and Perez testified in their depositions
2 that Rodriguez was living in Mexicali when Petitioner was born.

3 The testimony of Josefina Gaona, Petitioner's family friend, lacks credibility
4 because Gaona testified in her deposition that she was living on East 78th Street when
5 Petitioner was born and saw him soon after his birth at his grandparents' house.
6 However, at the evidentiary hearing, Gaona testified that at the time of Petitioner's birth
7 she had already moved to El Monte, California.

8 The Traverse in the case contains an attached declaration by Elvira Olivas
9 Rodriguez, in which Elvira Rodriguez states that she first met Perez in Los Angeles in
10 1968 and saw Petitioner in Los Angeles shortly after Petitioner's birth. After admitting
11 that she procured this statement from her sister, falsely claiming that it was from a
12 friend with the same name, Perez testified, "I'm very sorry, and . . . I'm very
13 remorseful, but I did it to protect -- to protect and for my son to be given his citizenship
14 back." (ECF No. 144 at 41:13-15).⁹ This declaration of Elvira Rodriguez further calls
15 into question the credibility of Rodriguez's deposition testimony. Furthermore,
16 Rodriguez's deposition testimony that she met Petitioner in Los Angeles seven days
17 after he was born lacks credibility because although she testified at her deposition that
18 she was living on East 78th Street at the time Petitioner was born, her visa application
19 indicates that she was living in Mexicali at the time. Ontiveros and Perez both testified
20 in their depositions that Rodriguez was living in Mexicali at the time of Petitioner's
21 birth.

22 The deposition testimony of Anastacia Ontiveros also contained significant
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24 ⁹ When asked by Counsel for Petitioner about why Perez would be dishonest
25 about Petitioner's birth place at the U.S. consulate and why Perez submitted a false
26 declaration from her sister, Elvira Rodriguez, Perez testified,

26 Q: Okay, Ms. Perez. That's at least two things now that you've admitted
27 are not true.

27 A: Yes.

28 (ECF No. 144 at 42:24-43:5).

1 inconsistencies bearing on her credibility. Ontiveros testified that she visited Petitioner
2 the day he was born, and then testified that she visited him the day after he was born.
3 Ontiveros testified that when she visited Petitioner the day he was born, her sister,
4 Garcia, was not at the house because she lived farther away. This testimony conflicts
5 with the testimony of Perez and Garcia stating that Garcia assisted with the birth. The
6 inconsistencies in the deposition testimony of Ontiveros raise doubts about Ontiveros's
7 credibility and about the alleged circumstances of Petitioner's birth.

8 The inconsistencies in the testimony of Petitioner's aunts and family friend cause
9 the Court to conclude that their testimony does not provide credible evidence that
10 Petitioner was born in the United States.

11 Petitioner's birth certificate, or delayed registration of birth, contains errors that
12 were not adequately explained at the evidentiary hearing. Petitioner's birth certificate
13 is not attested to by anyone other than Petitioner's mother. Perez testified at the
14 evidentiary hearing that the address written on Petitioner's birth certificate in three
15 different places was the incorrect address. Perez and Petitioner's aunts and family
16 friend testified that Petitioner was born at 2017 East 78th Street; however, the address
17 on the birth registration is 2030 East 78th Street.¹⁰ Perez testified at the hearing that she
18 knew the address was incorrect at the time of her deposition and that she did not tell the
19 truth when asked a question about it because she was worried that if she were truthful,
20 it would have negative consequences for her son. Admitting that she lied in her
21 deposition about the address on Petitioner's registration of birth, Perez testified, "I did
22 it to protect my son . . . and one does whatever one can for one's children." (ECF No.
23 146 at 30:13-16). Perez has done what she can to protect her son's claim of U.S.
24 citizenship by misrepresenting, at times under oath, the circumstances and facts related
25 to Petitioner's birth.

26
27 ¹⁰ Perez testified that Rodolfo Ontiveros filled out the birth certificate for her and
28 put his own address on the form and Perez did not realize the error until recently.

1 The address on Petitioner's birth certificate is also inconsistent with the address
 2 Perez listed on her November 3, 1969 application for a Social Security number. The
 3 address listed on the Social Security application is 2041 East 78th Street. Perez testified
 4 that Rodolfo Ontiveros helped her complete the Social Security application and the
 5 2041 address was Anastacia and Rodolfo Ontiveros's residence.

6 Petitioner's birth certificate was issued five months after Petitioner was born, was
 7 not signed by a witness to the birth, and contains incorrect information regarding the
 8 address where Petitioner was born and lived. None of the documentary evidence
 9 presented by Petitioner demonstrates that Petitioner was in the United States until
 10 several months after his birth. Petitioner's mother's application for a Social Security
 11 number was filed in November 1969 and Petitioner's birth registration and earliest
 12 immunization records were completed in January 1970. Additionally, the photographs
 13 submitted by Petitioner do not show Petitioner prior to five months of age.

14 Perez's testimony that Petitioner was born in Los Angeles, California is further
 15 impeached by the sworn affidavit signed by Perez at the U.S. consulate in Ciudad
 16 Juarez ("the Juarez Statement") stating that Petitioner was born in Tijuana, Mexico.¹¹
 17 The subsequent statement, declaration, and testimony of Perez alleging that she was

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 19 ¹¹ At the evidentiary hearing, the Court admitted the Juarez Statement into
 20 evidence for limited purposes of impeachment, not to establish the truth of the matter
 21 asserted therein. At the evidentiary hearing, the Court concluded that the statement
 could not be admitted for the truth of the matter asserted based on the public records or
 business records exceptions to hearsay.

22 Respondent contends that the Juarez Statement should be admitted under Federal
 Rule of Evidence 801(d)(2)(C) as nonhearsay because it is offered against the opposing
 23 party and was made by a person whom the party authorized to make a statement on the
 subject. The Court concludes that the statement is not admissible for the truth of the
 matter asserted pursuant to Rule 801(d)(2)(C) because the Court does not find that
 24 Petitioner authorized his mother to make a statement on the subject of his birth.

25 Respondent also contends that counsel for Petitioner stipulated to the
 admissibility of the Juarez Statement for all purposes in the deposition of Ryan Grizzle.
 See Ex. CC at 146:12-15. The Court concludes that given subsequent objections by
 26 Petitioner's counsel to the admissibility of the Juarez Statement for the truth of the
 matter asserted, the stipulation by Petitioner's counsel that the Juarez Statement was
 27 admissible does not make the Juarez Statement nonhearsay or subject to a hearsay
 exception. The Juarez Statement is admissible as impeachment evidence and is not
 28 admissible for the truth of the matter it asserts.

1 coerced to sign the affidavit at the U.S. Consulate through threats and promises are not
2 credible. The allegations of coercion are refuted by the testimony of consular
3 employees describing the customs and practices of the Fraud Prevention Unit in
4 interviewing and taking sworn statements. Each of the consular employees testified that
5 if any interviewee asked to take a break, use the restroom, or get a drink of water, it was
6 their policy to allow it. The consular employees testified that the door to the interview
7 room was unlocked at all times. Perez's allegations of coercion and threats are
8 inconsistent with the deposition testimony of Shashenka Esparza, Ryan Grizzle, and
9 Kerry Hyre, who testified as to the customary method for interviewing individuals
10 suspected of fraud and the practices related to obtaining a sworn statement from the
11 interviewee once fraud was confessed. Description of these practices included the
12 measures taken to ensure that the statement was voluntary and that interviewees
13 understood the consequences of their statement. The consular employees credibly
14 testified that it was not the practice of the U.S. Consulate to use threats or promises, and
15 any employee who did use these methods to obtain information faced serious
16 consequences. Perez's allegations of coercion change over time and do not appear to
17 have been made prior to 2012. The evidence at the hearing did not prove that the Juarez
18 Statement was made under coercive threats or promises.¹² The Court concludes that the

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21 ¹² At the evidentiary hearing, Petitioner's expert witness, Dr. Davis, explained
22 that interrogation techniques, used almost universally by law enforcement and
23 government agencies, were used by the consular employees interviewing Delia Perez.
Dr. Davis explained the factors that may contribute to an interviewee giving a false
confession, but testified that the same factors and interrogation techniques may cause
an interviewee to give a truthful confession.

24 At the evidentiary hearing, counsel for Respondent objected to the expert
25 testimony on the basis that Dr. Davis claimed to be an expert in police interrogation and
26 false confessions and this case does not involve police or a law enforcement agency.
27 Dr. Davis testified that her opinion was relevant regardless of whether an interview was
28 conducted by a law enforcement official because it describes the effect of certain
interrogation techniques on an interviewee. The Court overrules the objection to the
testimony of Dr. Davis. The Court finds that the testimony that common interrogation
techniques were used to interview Perez in Ciudad Juarez and that Perez's physical and
emotional state may have contributed to her decision to sign the Juarez Statement is not
sufficient to support an inference that the statement is a false confession.

1 Juarez Statement was made voluntarily.

2 Perez made past misrepresentations to obtain immigration benefits and has
3 admitted that she would do whatever she can to ensure Petitioner is recognized as a U.S.
4 citizen. Additionally, there are discrepancies between Perez's testimony regarding the
5 circumstances of Petitioner's birth, the Juarez Statement, and the visa application
6 regarding Perez's arrival in the United States. Taking the evidence together, the Court
7 finds that Perez's testimony that her son was born in the United States is not credible.

8 **IV. Conclusion**

9 The Court finds that Petitioner likely honestly believes he was born in the United
10 States. However, Petitioner's beliefs about the location of his birth are not persuasive
11 because they are based upon statements made to him by persons the Court finds to be
12 not credible.

13 The Court finds the testimony of Petitioner's mother and aunts as to Petitioner's
14 place of birth not credible. At the evidentiary hearing, Perez gave evasive answers, was
15 repeatedly impeached with the testimony she gave at her deposition, and changed her
16 testimony when she was pressed on a number of points. Perez has made a series of
17 misrepresentations to the United States government in order to obtain immigration
18 benefits. The testimony of Petitioner's aunts and family friend contains many material
19 inconsistencies regarding Perez's pregnancy and Petitioner's birth in Los Angeles.

20 Perez made an inconsistent statement indicating that Petitioner was born in
21 Mexico in a sworn affidavit she made at the U.S. consulate in Ciudad Juarez, Mexico.
22 Although Perez testified that the statement she made in Ciudad Juarez was false, Perez's
23 allegations that she was coerced or threatened to provide a false confession are not
24 persuasive. Perez's testimony that she arrived in the United States in the spring of 1968
25 is inconsistent with the statement Perez made at the U.S. consulate in Ciudad Juarez and
26 contradicted by the documentary evidence.

27 The testimony of Perez and her sisters that Petitioner's grandmother was present
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1 for Petitioner's birth and the birth took place at Petitioner's grandparents' home in Los
2 Angeles is inconsistent with Petitioner's grandmother's visa application indicating that
3 she did not arrive in the United States until November 1969. The consistency between
4 the visa application indicating that Petitioner's grandmother arrived in the United States
5 in November 1969 and Petitioner's mother's Social Security application submitted in
6 November 1969—the first documentary evidence showing that Perez was present in the
7 United States in 1969—lends support to the Respondent's theory that Petitioner was not
8 born in the United States and came to the United States with his mother and
9 grandmother in November 1969.

10 Petitioner's birth registration contains information inconsistent with the
11 testimony of Perez and Petitioner's aunts that Petitioner was born at his grandparents'
12 home. The birth registration is not signed by any witness to the birth, and was not
13 obtained until January 1970. Documentary evidence from Petitioner's childhood,
14 including immunization records and photographs, does not prove that Petitioner was in
15 the United States until several months after his birth.

16 The Court finds that the documentary and testimonial evidence, taken together,
17 does not prove by a preponderance of the evidence that Petitioner was born in Los
18 Angeles. The Court concludes that Petitioner has not met his burden to prove that he
19 is being unlawfully excluded from the United States because he is a citizen of the
20 United States by birth.

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25 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (ECF
26 No. 1) is denied.

27 IT IS FURTHER ORDERED that the parties shall file a status report as to how
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1 they intend to proceed on the remaining claims within twenty days of the date this
2 Order is filed.

3 DATED: June 28, 2016

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5 **WILLIAM Q. HAYES**
6 United States District Judge
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